U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

File: WAC 01 131 51849 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) withdrew the director's June 12, 2001 decision and remanded the matter to the director for further consideration and entry of a new decision. The director subsequently issued an April 17, 2003 decision, again denying the petition. The matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner is a technology research and development corporation established in 1991. It seeks to amend the beneficiary's employment stay under a blanket visa petition by filing for L-1A classification pursuant to an individual visa petition. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Xerox Corporation was issued a blanket visa petition approval in 1996, encompassing employees of Fuji Xerox Co., Ltd. and FX Global, Inc. FX Global, Inc. is the petitioner in this individual visa petition matter. Prior to March 2001, Xerox Corporation owned a 50 percent interest in Fuji Xerox Co., Ltd. which is located in Tokyo, Japan. Fuji Xerox Co., Ltd. employed the beneficiary from 1982 to 1994. In 1994, the beneficiary transferred from Fuji Xerox Co., Ltd. to Xerox International Partners in the United States pursuant to Xerox

Corporation's blanket petition. In August 2000, the beneficiary transferred to FX Global, Inc. In March 2001, Xerox Corporation sold a 25 percent interest in Fuji Xerox Co., Ltd. to a separate entity. Shortly thereafter, FX Global, Inc. submitted an individual visa petition notifying Citizenship and Immigration Services (CIS) that it no longer qualified under Xerox Corporation's blanket petition because of Xerox Corporation's sale of a *de jure* controlling interest in Fuji Xerox Co., Ltd. The petitioner claims that it is a wholly-owned subsidiary of Fuji Xerox Co., Ltd., the beneficiary's foreign employer from 1982 to 1994, and requests the continuation of the beneficiary's classification as a L-1A intracompany transferee.

On June 12, 2001, the director determined that because Fuji Xerox Co., Ltd. only owned a 49 percent interest in Xerox International Partners, the petitioner, FX Global, Inc. did not have the requisite intercompany relationship. On appeal, the petitioner claimed the relevant intercompany relationship is that between itself and Fuji Xerox Co., Ltd. and not Xerox International Partners, and that there had been no change in ownership between Fuji Xerox Co., Ltd. and itself.

In a December 18, 2002 decision, the AAO observed that the director had failed to consider whether a qualifying relationship existed between the petitioner and its foreign parent corporation. The AAO further observed that the record contained no evidence in support of the petitioner's claimed qualifying relationship with the beneficiary's foreign employer. The AAO remanded the matter "for the purpose of allowing the petitioner the opportunity to provide evidence of a qualifying relationship, as well as any other evidence the director may deem necessary in determining the petitioner's eligibility under the applicable statutory and regulatory requirements."

In his April 17, 2003 decision, the director concluded that if the relevant relationship is that between the petitioner and Fuji Xerox Co., Ltd., then the beneficiary had not been continuously employed abroad within three years preceding the time of the beneficiary's application for admission into the United States by a firm or corporation or other legal entity or an affiliate or subsidiary thereof. The director observed that the beneficiary had been employed from 1982 to 1994 by Fuji Xerox Co., Ltd. and had been employed from 1994 to August 2000 in the United States by Xerox International Partners. The director conceded that the beneficiary appeared qualified for the classification granted until the date Xerox Corporation sold a 25 percent interest in Fuji Xerox Co., Ltd. to an unrelated party, thereby terminating the previously existing business relationship between the petitioner and Xerox Corporation.

On appeal, counsel for the petitioner asserts that the beneficiary's employment with Xerox International Partners was not interruptive of the one year of continuous employment in the three years preceding the time of the petitioner's individual visa application because Xerox International Partners was an affiliate of Fuji Xerox Co., Ltd. as well as FX Global Inc. until March 2001. Counsel references 8 C.F.R. § 214.2(l)(ii) that states in pertinent part: "Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted towards fulfillment of that requirement."

Counsel's assertion and citation is persuasive in part. The beneficiary's continuous employment abroad for one of three years preceding the time of application was not interrupted by the beneficiary's employment in a lawful status in the United States for the parent company of his foreign employer. 8 C.F.R. § 214.2(l)(ii).

However, the issue in this matter, as the AAO previously observed, is the lack of documentary evidence in the record regarding the petitioner's claimed subsidiary relationship to the beneficiary's foreign employer. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Although the director did not request this information prior to issuing his April 17, 2003 decision despite the AAO's remand to afford the petitioner the opportunity to provide evidence of a qualifying relationship, neither did the petitioner submit this evidence to the AAO on appeal. Where, as here, the petitioner is granted an automatic right to appeal the decision of the director and thus is given an opportunity to establish eligibility in an appropriate forum, the petitioner's failure to submit the evidence that the AAO specifically observed was lacking in the record cannot be overlooked. The record on appeal continues to lack any evidence of a qualifying relationship between the beneficiary's foreign employer and the petitioner. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The AAO declines to speculate on the qualifying relationship between the beneficiary's foreign employer and the petitioner.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.